

REMARKS

This paper is responsive the non-final Office Action issued April 5, 2010. Reconsideration and allowance of claims 1-18 are requested.

The Office Action

Claims 1-3, 5, 6, 8, and 12 stand rejected under 35 U.S.C. § 103 over Carim (US 6,708,050) as modified by Kroecker (US 2006/0155183).

Claim 4 stands rejected under 35 U.S.C. § 103 over Carim as modified by Kroecker, as further modified by Dunseath (US 4,669,479).

Claims 13 and 14 stand rejected under 35 U.S.C. § 103 over Carim as modified by Kroecker, as further modified by Asher (US 4,809,705).

Claims 15-18 stand rejected under 35 U.S.C. § 102 over Carim.

Election of Species

In the Office Action of April 5, 2010, claims 7 and 9-11 were considered non-elected. The present amendment amends claims 10 and 11 to become generic claims. The subject matter that was specific to the species of Figure 2 has been removed and/or replaced. It is submitted that claims 10 and 11 should be considered in the next Office Action the same as if claims 10 and 11 had been cancelled and replaced by new dependent claims of the present scope.

Care has been taken to be sure that claims 7 and 9 properly depend from a preceding generic claim such that they will be allowable therewith.

The Claims Distinguish Patentably Over the References of Record

Claim 1 calls for the reference electrode to be mounted on a body-facing bottom surface of the electronics module. By placing the reference electrode under the electronics module, the wearable device can be made smaller and more compact. Neither Carim nor Kroecker disclose or fairly suggest such a location for a reference electrode.

Claim 1 further calls for the electronics module to include at least a pair of conductive pads and for a pair of the sense electrodes to be connected directly to such the conductive pads. This simplifies construction and again contributes to a

more compact wearable device. Carim and Kroecker both teach that the electrodes should be mounted displaced from the electronics and interconnected via electrically conductive pathways or traces. The conductive pathways are difficult to manufacture and can be readily broken or fractured, leading to higher failure rates.

Accordingly, it is submitted that **claim 1 and claims 2-4, 7, 8, 10, 11, and 12 dependent therefrom** distinguish patentably and unobviously over the references of record.

Claim 5 has been placed in independent form including the subject matter of its parent claims 1 and 4. Claim 5 calls for a reference electrode which is integrally formed with the electronics module. By contrast, the electrodes of Carim and Kroecker are all connected with their electronic module by thin conductors or traces which are difficult to manufacture and subject to failure.

Further, claim 5 calls for the electrode to be a dry electrode. The Examiner does not assert that the electrodes of Carim or Kroecker are dry electrodes.

Accordingly, it is submitted that **claim 5 and claims 6, 9, 13, and 14 dependent therefrom** distinguish patentably and unobviously over the references of record.

Claim 15 has been amended to become specific to the embodiment of Figure 1 by calling for the reference electrode to be disposed on the bottom of the electronics module and for the sensor electrodes to be connected at one end with the top surface of the electronics module. This compact configuration is not disclosed by or fairly taught by Carim. Rather, Carim teaches against such direct connection of electrodes to the electronic modules in favor of using conductive pathways.

Accordingly, it is submitted that **claim 15 and claims 16-18 dependent therefrom** distinguish patentably and unobviously over the references of record.

37 CFR 1.77(b)

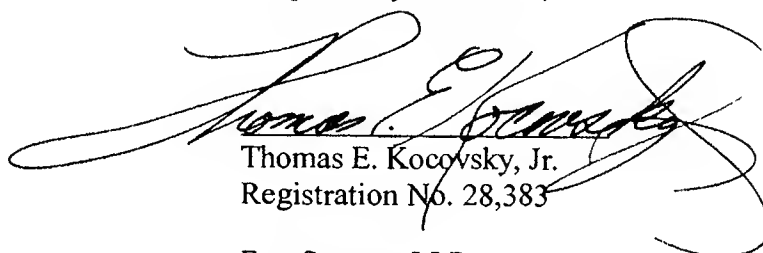
37 CFR 1.77(b) sets forth *recommended* section headings. The applicant thanks the Examiner for the recommendations regarding section headings, but respectfully declines to use such section headings.

CONCLUSION

For the reasons set forth above, it is submitted that claims 1-18 distinguish patentably over the references of record and meet all statutory requirements. An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is requested to telephone Thomas Kocovsky at 216.363.9000.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "Thomas E. Kocovsky, Jr.", is written over the typed name and registration number.

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